

(2009) 07 MAD CK 0254

In the Madras High Court

Case No : W.A. No's. 796 of 2008 and 378 of 2009 and M.P. No's. 1 of 2008 and 1 of 2009

The Managing Director Tamil Nadu Housing Board and The
Executive Engineer

APPELLANT

Vs

I. Ravichandran (Ravi Sam), Smt. Savithiri Sam and The
State and Secretary to Government Housing and Urban
Development Department
The State and Secretary to
Government Housing and Urban Development Department Vs
I. Ravichandran (Ravi Sam), Smt. Savithiri Sam, The
Managing Director Tamil Nadu Housing Board and The
Executive Engineer

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 23(1A), 23(2), 4(1)
Tamil Nadu Land Acquisition Act, 1996 — Section 16, 16A, 16B, 48B
Tamil Nadu State Housing Board Act, 1961 — Section 72

Citation : (2009) 6 MLJ 615

Hon'ble Judges : K. Venkataraman, J;D. Murugesan, J

Bench : Division Bench

Advocate : P.S.Raman, A.A.G. for D. Veerasekaran, in W.A. No. 796 of 2008, Raja Kalifullah, Govt. Pleader in W.A. No. 378 of 2009, for the Appellant; Raja Kalifullah, in W.A. No. 796 of 2008 Govt. Pleader (R3), R. Muthukumarasamy for Thenmozhi Shivaperumal, (R1 and R2), R. Muthukumarasamy in W.A. No. 378 of 2009 for Thenmozhi Shivaperumal, (R1 and R2) and D. Veerasekaran, (R3 and R4), for the Respondent

Judgement

D. Murugesan, J.—The Writ appeal in W.A.No. 796 of 2008 is at the instance of the Tamil Nadu Housing Board. The Writ appeal in W.A.No. 378 of 2009 is at the instance of State. Both the writ appeals question the common order dated 28.4.2008 made in the writ petition in W.P.No. 5316 of 2006. By that order the writ petition was allowed by setting aside the impugned orders therein and the Government was directed to exclude the lands in survey numbers in question from the acquisition proceedings and reconvey the same in favour of the

petitioners.

2. The controversy in the writ appeals arises under the following circumstances:

An extent of 43.19 acres of land in S. No. 46/2 etc., in Sowripalayam Village, Coimbatore Taluk and District was notified u/s 4(1) of the Land Acquisition Act for housing scheme. After considering the objection raised in 5A enquiry, a declaration was made and ultimately the acquisition proceedings culminated into one of an award and possession of land was taken over and the same was handed over to the Tamil Nadu Housing Board for implementing the scheme. The respondents earlier approached this Court in W.P. No. 6453 of 1991 questioning the acquisition proceedings and the writ petition came to be allowed. However, the appeal preferred at the instance of the State came to be allowed on 14.2.1996. Hence, the acquisition proceedings became final. No materials are placed before us that the order in the writ appeal was questioned by way of further appeal. Thereafter, the respondents approached the Government with a request to drop the acquisition proceedings insofar as their lands are concerned. That request was rejected on 18.4.2000. It was again questioned by the respondents in W.P. No. 8512 of 2000. This court while setting aside the said order remitted back the matter to the Government for fresh consideration. The respondents again approached this Court by yet another writ petition in W.P. No. 22200 of 2004 seeking for reconveyance of the lands. By order dated 11.9.2004, this Court again directed the Government to consider their representations made in this behalf. By order dated 17.8.2005, the Government rejected the request for reconveyance on the ground that the Tamil Nadu Housing Board had informed the Government that the lands would be dealt with in terms of Section 72 of the Tamil Nadu Housing Board Act 1961 and the Tamil Nadu Housing Board did not give any consent for reconveyance. The respondents again made another representation, which was also rejected by the Government on 5.10.2005. Both the orders were put in issue before this Court and by the order under challenge in the writ appeal the learned Judge after setting aside the impugned orders had allowed the writ petition as stated earlier. Both the State and the Tamil Nadu Housing Board have come up by way of present writ appeals.

3. We have heard Mr. Rajakalifullah, the learned Government Pleader appearing for the appellant State and Mr. P.S. Raman, learned Additional Advocate General assisted by Mr. D. Veerasekaran, the learned Counsel appearing for the appellant Tamil Nadu Housing Board and Mr. R. Muthukumarasamy, the learned Senior Counsel appearing for the respondents.

4. The questions that arise for our consideration are as follows:

(i) Whether in the given facts and circumstances of the case, the respondents are entitled for reconveyance of the land especially when the Government had not so far forfeited the lands in exercise of the power conferred u/s 16B of the Tamil Nadu Amendment Act to the Land Acquisition Act and

(ii) Whether the reasons adduced by the Government in the impugned orders are

justifiable?

5. Point No. 1. The Land Acquisition Act (Tamil Nadu Amendment Act) of 1996 (Act XVI of 1997) was enacted by inserting Sections 16A and Section 16B. By the same Amendment Act Section 48-B was also introduced. Both the provisions read as under:

Section 16-B Land to be forfeited in certain cases- Where the Government are satisfied that the land acquired under this Act for any public purpose as referred to in Sub-section (1) of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances; provided that no order under this section, shall be made unless the person or authority aggrieved has had a reasonable opportunity of being heard.

48-B Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the Acquisition of such land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act.

6. Factually, the lands in question were taken possession on 20.11.1991. In terms of Section 16 of the Act, when the Collector has made an award u/s 11, he may take possession of the land and once the possession is taken, thereupon the land shall vest absolutely in the Government free from all encumbrances. The wording "vesting in the Government" came up for consideration before the Division Bench of this Court in R. Shanmugam and Ors. v. The State of Tamil Nadu rep.by its Secretary, Housing & Urban Development Department, Chennai and Ors. 2006 (4) CTC 290.

7. In the said Judgment, in paragraph 15, it has been held that the word "vest" used in Section 16 must include vesting of the land in Government not only in regard to title but also possession and the word "vest" used in Section 16 means and includes not only conferring mere right to possess the land acquired by the Government but also confer title on it. There cannot be any difficulty that once the land is acquired for the Housing Board , the Government is empowered to hand over the land to the Board for implementation of the scheme. Once the land is handed over to the Housing Board it shall be dealt with by the Board in accordance with the provisions of the Tamil Nadu Housing Board Act for the limited purpose of implementing the scheme. In case, if the land is not used for the purpose for which it was handed over to the Housing Board, the Government in exercise of the power conferred u/s 16B is entitled to forfeit the land as penalty and once such exercise is made the land shall vest in the Government in Revenue Department free from all encumbrances. The provision of "vesting of land " as contemplated u/s 16 and 16B are similar in meaning and therefore the

Government is free to deal with the said land as if the land does not belong to the Tamil Nadu Housing Board.

8. By the impugned order, the request of the respondents for reconveyance was rejected on two grounds viz., that in terms of Section 72 of the Tamil Nadu Housing Board Act 1961 the Board has got right to deal with the property and there is no question of either surrendering possession of the land to the Government or the Government could exercise power u/s 16B of the Act. Further, the request was not considered on the ground that the consent of the Board was not given for reconveyance of the lands. In our opinion both the above two reasons cannot be legally sustainable. In the very same judgment, in *R. Shanmugam and Ors. v. The State of Tamil Nadu rep.by its Secretary, Housing & Urban Development Department, Chennai and Ors.* 2006 (4) CTC 290) the Division Bench also considered the word "vesting" employed in 72 of the Tamil Nadu Housing Board Act. It has been held that the word "vest" employed in Section 72 of the Housing Board Act, must be construed in the context it is used. The object of the Act is only to enable the Board to frame a Housing or Improvement Scheme and execute such a scheme. In the said context, the word "vesting" may relate to title or possession for some limited purpose of disposing of the same as contemplated u/s 72. The Government may forfeit the land as penalty in case the land is not put in use by the Tamil Nadu Housing Board for the purpose for which it was acquired u/s 16B of the Act.

9. Section 72 of the Housing Board Act cannot be pressed into service by the Board. The amendment to the Central Act by insertion of the Section 16B should override the provisions of Section 72 of the Tamil Nadu Housing Board Act. Hence the reason adduced in the impugned orders in the writ petition to reject the request for reconveyance on the ground that Section 72 is available for Housing Board cannot be sustained. For the same reason for invoking Section 16B of the Act the consent of the Board is absolutely immaterial for the Government. It is an independent power vested in the Government to forfeit the land as penalty in case the land is not utilised by the Board for the purpose for which it was acquired and handed over to the Housing Board. On both the grounds the orders impugned in the writ petition cannot be sustained and they should be set aside.

10. Point No. 2: This relates to the next contention whether by virtue of setting aside those orders, the respondents are entitled to reconveyance as a matter of right?

11. The procedure for acquisition of the lands for implementation of the Scheme may be summarised as follows. The Board frames the scheme; makes a request to the Government for allotment of necessary land; in the event the Government is satisfied with the scheme and the approved plan submitted by the Housing Board, they initiate the acquisition proceedings and on completion of such proceedings and on taking possession, the land is handed over to the Housing Board for implementation of the scheme. To this extent there is no difficulty as to

the procedure.

12. However, when the land so handed over to the Housing Board is not utilised for the purpose for which it was acquired two questions may arise, viz., Whether the Housing Board may claim that in the event the scheme for which the land was acquired is not implemented it may resolve to deal with the land in terms of Section 72 of the Housing Board Act? In view of the judgment in *R. Shanmugam and Ors. v. The State of Tamil Nadu rep.by its Secretary, Housing & Urban Development Department, Chennai and Ors.* 2006 (4) CTC 290, in such contingency, the Housing Board cannot invoke Section 72. The other question would be as to how such a land to be dealt with. The answer is Section 16 B of the Tamil Nadu Housing Board Act. When once the State Government is satisfied that the land so acquired and handed over to the Tamil Nadu Housing Board is not utilised for the purpose for which it was acquired it can forfeit the land as penalty and once such exercise is made, the land shall vest in the Government in Revenue Department free from all encumbrances. When the land vests in the Government then how it should be dealt with has also been considered in the said judgment following the judgment of the Apex Court in *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, wherein the Apex Court has observed as follows:

The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the Directive Principles of the Constitution.

13. Hence the land vests in the Government, in a case where possession is taken in terms of Section 16 or forfeiture of the land is made in exercise of the power u/s 16B in Government. Once such vesting takes place, it shall be dealt with only in accordance with the above guidelines of the Apex Court. Therefore, even assuming that the reasons given in the impugned orders in the writ petition are not sustainable, it for the Government to first exercise the power in terms of Section 16B and forfeit the land and only in such event an application 48-B could be entertained for reconveyance. Even assuming that the land is forfeited and is available for consideration of an application for reconveyance u/s 48B, the owner has no automatic right for reconveyance. In that context, this Court could direct the Government to consider the above two aspects for the purpose of dealing with the application, if any, filed by for reconveyance u/s 48B. In the absence of application of any of the provisions by the Government in order to the vesting the land in Revenue Department, the land owner is not entitled for a direction for reconveyance as has been done in this case. On this score, the order in the writ petition directing the Government for reconveyance of the lands in question is set

aside and the writ appeals are disposed of with the following directions.

14. The Government is entitled to invoke Section 16B of the Tamil Nadu Amendment Act and on satisfying itself it can forfeit the lands in question as penalty from the Housing Board. In the event the Government exercise the above power and consequently the lands vests in the Government, the application filed by the respondents for reconveyance u/s 48B of the Act shall be considered. Such consideration shall be done in accordance with the judgment of this Court made in R. Shanmugam and Ors. v. The State of Tamil Nadu rep.by its Secretary, Housing & Urban Development Department, Chennai and Ors. 2006 (4) CTC 290 which was rendered by following the judgment of the Apex Court in State of Kerala and others Vs. M. Bhaskaran Pillai and another, . Such exercise shall be completed by the Government within a period of three months from today. Consequently, the connected M.Ps are closed. No costs.